

## REMARKS

Applicants incorporate by reference their August 3, 2009 Response and Request for Reconsideration, which further responds to the pending rejections.

### **35 U.S.C. § 103**

The pending claims are directed to methods that detect a megakaryocyte. The methods generate scattergrams from detected fluorescent light and detected scattered light. The scattergram comprises a predetermined megakaryocyte region. The megakaryocytes are detected through an automated hematology analyzer having a flow cytometer.

Sakata (Sysmex Journal International 2000) in view of Houwen (US 5,830,701), Walters et al (Laboratory Hematology 2000), and Ota et al (Haematologia 2000) hereinafter “cited combination” relate to a nucleated red blood cell (NRBC) measurement. See Sakata, pg. 41. The cited combination does not disclose the detection of megakaryocyte executed by an automated hematology analyzer having a flow cytometer.

Moreover, as acknowledged in the Official Action’s description of the individual references, “Sakata does not teach the use of the method to detect megakaryocytes or to determine if a population exists in a megakaryocyte region of a scattergram.” More directly, Sakata does not disclose that megakaryocyte can be detected through the scattergram generated from the deterred scattered light and the detected fluorescent light. In Sakata, the size of the megakaryocyte is 40-100  $\mu$  m and the size of WBC is 10-25  $\mu$  m. The NRBC scattergram of Fig. 4 of Sakata is not able to set the megakaryocyte region, because the megakaryocyte region exists out of range of the NRBC scattergram of Fig. 4. Moreover, like the cited combination Sakata is silent to the detection of a megakaryocyte executed by an automated hematology analyzer having a flow cytometer.

Similarly, Houwen et al does not disclose that a megakaryocyte can be detected through a scattergram generated from the detected scattered light and the detected fluorescent light. Houwen et al discloses that “Hematopoietic progenitor cells (HPCs) consist of many subclasses including pluripotent stem cells, lymphoid stem cells, CFU-

GEMM colony forming unitgranulocyte/erythroid/macrophage/megakaryocyte, BFU-E, CFU-E, CFU-Meg, CFU-GM colony forming unitgranulocyte/macrophage, CFU-EoS colony forming uniteosinophil, progenitor B cells and progenitor T cells (see FIG. 9)." However, Houwen does not perform a detection of megakaryocyte. Houwen teaches that cells existing in the DELINEATED ZONE of Fig. 3 are hematopoietic progenitor cells. The cells in the DELINEATED ZONE of Fig. 3 do not contain a megakaryocyte which exists out of range of scattergram of Fig. 3. Like the cited combination, Houwen is silent to detection of megakaryocyte executed by an automated hematology analyzer having a flow cytometer.

Moreover, Walters alone or as part of the proposed combination does not disclose that megakaryocyte can be detected by using the scattergram generated from the detected scattered light and the detected fluorescent light. Walter's scattergrams of Figs. 1 and 2 are not able to detect megakaryocyte, which exist out of range of the scattergrams. Like the cited combination, Walters too is silent to detection of megakaryocyte executed by an automated hematology analyzer having a flow cytometer.

Like the cited combination, Ota does not disclose that megakaryocyte can be detected by using the scattergram generated from the detected scattered light and the detected fluorescent light. Ota discloses megakaryocyte detection using smear slide stained by polymethine dye. Ota too is silent to detection of megakaryocyte executed by an automated hematology analyzer having a flow cytometer. Accordingly, Applicants' respectfully requests withdrawal of the pending rejections.

### **Unsupported Evidence**

By the explanations above and those expressed in Applicants' August 3, 2009, Response and Request for Reconsideration, Applicants specifically point out the errors in the Official Action. The results of the proposed combination are neither a 'predictable result' nor is there 'a reasonable expectation of success' because the Official Action's reasoning is inconsistent with the teachings of each of the cited references relied on to reject the claims. See MPEP 2144.03. Applicants request documentary evidence to support these conclusions by requesting an affidavit from the Examiner. See MPEP 2144.03 and 37 CFR 1.104(d)(2) (when the examiner is relying on personal knowledge

to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding).

### **Conclusion**

In view of the remarks above, Applicants respectfully submit that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited. If for any reason the Examiner feels that the above Response and Request for Reconsideration does not put the claims in condition to be allowed and that a discussion would be helpful to advance prosecution, it is respectfully requested that the Examiner contact the undersigned attorney directly at (312)-321-4786.

Respectfully submitted,

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